



## APPEALS

### Staffing Challenges and Institutional Culture Remain Barriers to Quality Taxpayer Service Within the IRS Independent Office of Appeals

#### WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Taxpayers wishing to obtain review of their case by the IRS Independent Office of Appeals (Appeals) have been experiencing long delays, with the average case spending more than a year in Appeals' inventory.<sup>1</sup> When Appeals hears cases, taxpayers encounter policies determined more for the convenience of Appeals than the needs of taxpayers. A timely appeal in a fair and unbiased forum, carrying the perception and reality of independence, is an essential aspect of taxpayer rights and quality tax administration.

#### EXPLANATION OF THE PROBLEM

An Appeals review represents taxpayers' last, and often best, chance to settle their cases administratively within the IRS. Such resolutions constitute the ideal scenario for taxpayers and the IRS, as they minimize costs and expedite finality. However, case delays, inflexible policies by Appeals, and an apparent lack of independence are hampering this process, which leaves some taxpayers with concerns and doubts about Appeals' independence.

Once a case is transferred to Appeals,<sup>2</sup> it sits for an average of 48 days before being assigned to an Appeals Officer (AO).<sup>3</sup> These AOs are themselves overwhelmed, as their numbers have fallen by approximately 33 percent since fiscal year (FY) 2010.<sup>4</sup> Unsurprisingly, cycle times have increased by 103 percent from FY 2017 to FY 2022.<sup>5</sup> Once AOs are able to focus on a taxpayer's case, they may lack general training and specific subject matter expertise, which have been diminishing on account of institutional attrition. Practitioners report that in many instances they feel an added burden to educate AOs on administrative procedures, the IRC, the law, or evidentiary rules, and this additional work causes taxpayers to incur extra costs. This scenario, although not Appeals' fault, is taxpayers' problem, as they are left wondering what

has become of their cases, why they should pay additional costs, and how to capture the attention of overworked AOs.

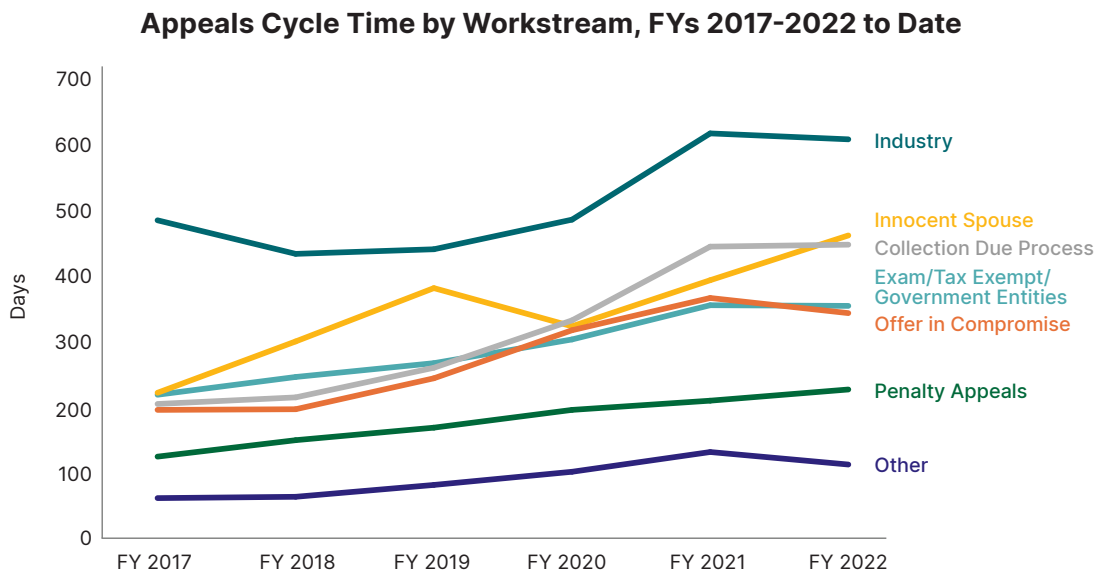
After waiting out initial delays, taxpayers are subject to certain Appeals policies that represent a “take it or leave it” proposition. For example, taxpayers sometimes find that the AO with whom they are interacting lacks the practical authority to settle their case.<sup>6</sup> Sometimes, taxpayers may feel that the assigned AO is simply a conduit between the taxpayer and a technical guidance coordinator who is actually deciding the case. Other procedures impact independence, such as situations in which the IRS Office of Chief Counsel (IRS Counsel) and Compliance are invited to Appeals hearings beyond the pre-conference,<sup>7</sup> even if taxpayers object.<sup>8</sup> In these cases, it is possible or even probable that the AO has a prior working relationship with the Compliance agent or Counsel attorney. Further, at the conclusion of many Appeals proceedings, the AO provides an explanatory Appeals Case Memorandum (ACM) to the Compliance team but does not provide a copy to the taxpayer. Although many of Appeals’ challenges are not of its own making, taxpayers should still have a right to expect Appeals proceedings that are timely, fair, and independent.

## ANALYSIS

### Appeals’ Delays Have Adverse Consequences for Taxpayers

Taxpayers with nondocketed cases in Appeals can currently expect a resolution in an average of 365 days – 103 percent (185 days) longer than in FY 2017.<sup>9</sup> Cycle times, which vary depending on the complexity and type of case involved, have generally been trending upward for all major Appeals workstreams, as shown in Figure 2.9.1.<sup>10</sup>

**FIGURE 2.9.1<sup>11</sup>**



These expanding cycle times have a real-world impact on taxpayers. As related by one practitioner who focuses on collection cases, her clients generally come to Appeals eager to quickly resolve their issues.<sup>12</sup> Although taxpayers provide the requisite information, delays of various sorts within Appeals can cause cases to linger on for months and even years. In some situations, so much time is wasted that taxpayers have to repeatedly submit new and updated financial information. They are left frustrated and angry as their financial lives remain on hold while they wait for Appeals to conclude their cases.

Another practitioner lamented that taxpayers sometimes bear the negative consequences from AOs' inability to keep up with their inventories.<sup>13</sup> The result can be that taxpayers are left in limbo. In one situation, even though the taxpayer wanted to drop the appeal and move forward by fully paying the balance, it was impossible to do so until an AO was finally assigned and able to pick up the case.<sup>14</sup>

An additional complication, exacerbated by the pandemic, is that taxpayers whose refund claims have been disallowed by the IRS generally have two years to obtain the refund or to file a petition in a U.S. district court or the U.S. Court of Federal Claims, unless they enter into an extension agreement with the IRS by signing Form 907, Agreement to Extend the Time to Bring Suit.<sup>15</sup> This two-year period is sometimes nearing a close by the time taxpayers conclude their dealings with Appeals, and taxpayers, practitioners, and AOs may not know of the need for a Form 907 extension or may face bureaucratic hurdles within Appeals when attempting to obtain such an extension.<sup>16</sup> TAS has been working with Appeals to streamline these procedures and to develop alternative solutions that would mitigate these timing issues.<sup>17</sup> Of course, taxpayers can protect themselves by filing a petition in the U.S. Tax Court, but such a step imposes unnecessary burdens on taxpayers wishing to obtain timely and fair case resolutions. The National Taxpayer Advocate has suggested that the IRS issue guidance pursuant to IRC § 7508A to postpone the deadline under IRC § 6532 for notices of claim disallowance that the IRS issued since the start of the COVID-19 pandemic and for which the period of filing suit has not yet expired.<sup>18</sup> At this time, IRS Counsel is not interested in providing a postponement.<sup>19</sup>

### **Account and Processing Support Currently Represents a Bottleneck Within Appeals**

When cases arrive at Appeals, they go to Account and Processing Support (APS) for intake, technical processing, and transfer to an Appeals office, where they are assigned to individual AOs. If a petition has already been filed by the taxpayer in the U.S. Tax Court, APS sends the case to IRS Counsel, which will file an answer with the Tax Court before the case comes back to APS to continue in the Appeals workflow.<sup>20</sup> As described more fully below, Appeals temporarily prioritized cases docketed in the Tax Court over non-docketed cases, to address increased inventory arising from communications challenges during the COVID-19 pandemic, causing longer delays for non-docketed cases.<sup>21</sup> Regardless, APS is the gateway to Appeals, and the gate has become perilously narrow.

During FY 2022, approximately 74,000 cases arrived at Appeals.<sup>22</sup> Each of these cases had to await the attention of someone in APS, which had only 195 employees by the end of FY 2022.<sup>23</sup> APS has experienced a "brain drain," with many of its senior employees moving into other parts of the IRS where there was the possibility for career advancement and enhanced compensation.<sup>24</sup> Finding themselves with an overwhelming workload and no meaningful career path within Appeals, many APS employees looked for better alternatives elsewhere. A well-staffed and experienced group of APS personnel is essential to the smooth and efficient operation of Appeals, and the lack of such a group helps explain the average 48 days in APS inventory before a case is first transferred to an Appeals office.<sup>25</sup> This is important because while cases sit with APS, taxpayers are in limbo, unable to contact anyone in Appeals about the status of their cases.

To its credit, Appeals recognizes this problem and is attempting to develop a more attractive career path for APS personnel within Appeals.<sup>26</sup> Further, Appeals is striving to hire additional APS employees.<sup>27</sup> This effort is somewhat undercut, however, by the circumstance that entry-level IRS personnel in general earn roughly the same as new Waffle House employees and others just starting out in the retail industry.<sup>28</sup> To the extent possible, the IRS should allocate some of the Inflation Reduction Act of 2022 funds to implement a competitive tiered pay structure, which would provide opportunities for advancement and retention of experienced APS personnel and AOs.<sup>29</sup>

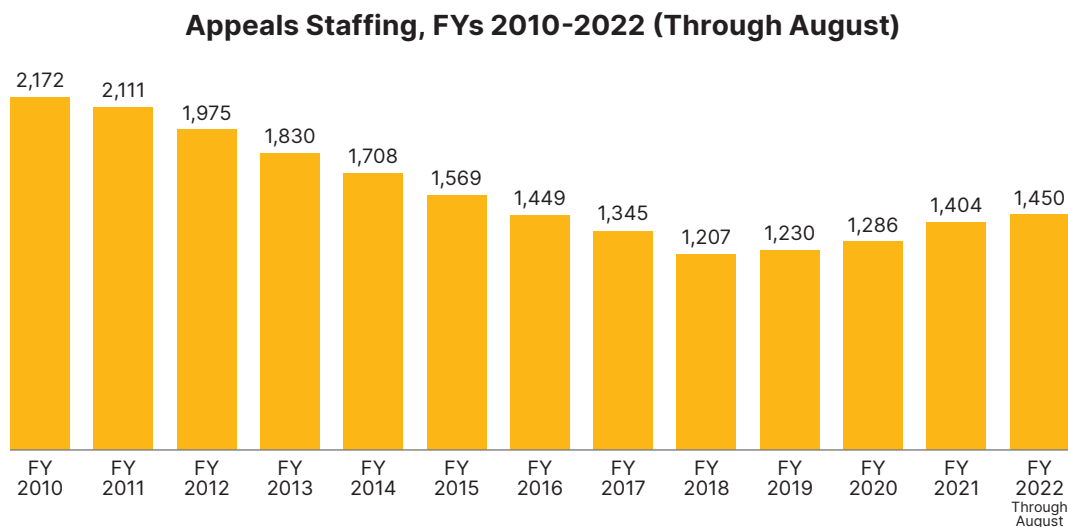
Appeals is also instituting steps to increase the efficiency of APS's efforts, including leveraging modernization and technology. These steps include working with Compliance to receive electronic case files, which can be more quickly processed and transferred to Appeals offices.<sup>30</sup> Likewise, Appeals is seeking ways in which APS

can eliminate some extraneous duties, allowing employees to focus on their core tasks.<sup>31</sup> Successfully staffing APS and enhancing its productivity is a crucial starting point in reducing the long cycle times within Appeals.

### Appeals Officers Are Understaffed and Overwhelmed

Another component of the delay issue is a lack of AOs, which has been a problem for years. Between FYs 2010 and 2017, the population of Appeals employees fell by approximately 40 percent.<sup>32</sup> Staffing has remained relatively constant since then with some recent improvements.<sup>33</sup> However, maintaining or even moderately increasing staffing levels, especially as case receipts begin to rise after the height of the COVID-19 pandemic, is a recipe for expanding backlogs and delays.<sup>34</sup>

**FIGURE 2.9.2**<sup>35</sup>



In real-life terms, this means AOs, who are confronted with daunting caseloads, may not give taxpayers and their arguments the full attention they deserve and may simply rush them through to clear inventories. One practitioner described recent proceedings in which he had requested the case files, but the AOs were pushing hard to hold the hearings before they had even furnished the files.<sup>36</sup> Another practitioner remarked that in numerous Collection Due Process cases, his clients had been hurried through proceedings held by AOs who did not seem familiar with their cases and were uninterested in discussing the specifics, instead appearing to value their own efficiency of process above considerations of fair and just tax administration.<sup>37</sup>

Various factors have affected AO workloads. Among other things, Appeals has been flooded with cases from the Automated Underreporter (AUR) program and Correspondence Exam, which have increased the demands on AOs.<sup>38</sup> In many current cases, a statutory notice of deficiency is issued before a case is developed or worked, and the case goes straight to assessment and potentially collection or to the U.S. Tax Court if the taxpayer files a petition. For docketed cases, Counsel sends the case to Appeals for assignment. Approximately 60 percent of Campus docketed cases currently result from a statutory notice of deficiency issued by the AUR unit.<sup>39</sup> Most of these cases are only minimally developed, if at all, and, as a group, they significantly increase the burden on taxpayers, the Court, Counsel, and AOs. To deal with this problem, some have even suggested that the IRS suspend the issuance of most new AUR and Correspondence Exam notices.<sup>40</sup> TAS has urged the AUR and Correspondence unit to undertake additional contact attempts before issuing a statutory notice of deficiency for those cases with 12 months or more on the statute of limitations for assessment.<sup>41</sup>

## Most Serious Problem #9: Appeals

Appeals has agreed to examination assistance procedures with Exam for certain docketed cases in which Appeals receives new information that must be evaluated.<sup>42</sup> For historical context,<sup>43</sup> this approach is consistent with the principles underlying the adoption of the Appeals Judicial Approach and Culture (AJAC) program in 2014.<sup>44</sup> To facilitate Appeals' workflow and protect its independence, AJAC allowed Appeals to return matters to Compliance for additional factual development when taxpayers raised new issues or presented new evidence.<sup>45</sup>

Appeals has also adopted strategies to expedite the resolution of docketed cases. These procedures include deploying additional AOs, prioritizing docketed casework in Exam Appeals, streamlining initial contact with taxpayers or their representatives through the use of telephone calls, and encouraging a greater use of oral testimony where appropriate.<sup>46</sup>

Another challenge for Appeals has been retaining experienced AOs. Appeals has been working hard to increase staffing and has been relatively successful in hiring new AOs.<sup>47</sup> The problem, though, is that they have been losing AOs on account of attrition. Hiring and training AOs is not a quick process, which means that as Appeals rebuilds its workforce, taxpayers experience delays and uncertainty. Figure 2.9.3 shows this pattern.

**FIGURE 2.9.3**<sup>48</sup>

### Appeals Hiring vs. Attrition, FYs 2017-2022 to Date

	Hiring	Attrition	Net Employees
FY 2017	 +24	 -71	-47
FY 2018	 +3	 -88	-85
FY 2019	 +140	 -77	+63
FY 2020	 +100	 -83	+17
FY 2021	 +153	 -90	+63
FY 2022	 +163	 -105	+58

 = 5 employees

This attrition has not only largely offset Appeals' energetic hiring efforts, but, in practice, has meant that veteran AOs are routinely replaced by inexperienced AOs. This is problematic because fledgling AOs must initially spend time in training before they can start handling cases, which can be especially challenging when it comes to more complex cases. Even then, it inevitably takes time to overcome the learning curve and approach the productivity of the veteran employees they are replacing. Further, the subject matter expertise that is lost as AOs retire or otherwise move out of Appeals can take years to recover.

Appeals has hired heavily from the Compliance side of the IRS, which has its benefits and its drawbacks, as those employees possess important IRS knowledge but may also hold ingrained biases. One practitioner commented that some AOs, particularly newer AOs, often consider Appeals an extension of Exam without the



ability to consider new information.<sup>49</sup> Compliance personnel tend to look at issues as being right or wrong, whereas an AO's function is to weigh nuanced factors in determining the hazards of litigation and to resolve even those cases that fall into a gray area. Because many AOs are not attorneys, they must develop the skillset to review a case and analyze it the way that a court would evaluate it, reaching a decision based on facts, credibility of witnesses, applicable law, and the rules of evidence – not an easy task, especially for non-lawyers. The same practitioner has observed inconsistency in quality among Appeals' personnel in understanding the application of law and described a case in which the AO refused to accept canceled checks from a bank statement as proof of payment. On the other hand, hiring from outside the IRS raises its own quality issues, as it takes time to learn IRS internal procedures, administrative guidance, tax returns, and schedules. Another practitioner referenced a situation in which the AO seemed like she had never seen a Schedule C before, and the practitioner essentially had to educate her.<sup>50</sup>

Appeals can remedy some of these problems with a careful blend of internal and external hires and with more comprehensive training of new and inexperienced AOs. Among other things, this training should focus on the proper role of an AO, the importance of independence, the nuances of hazards of litigation settlements, and an understanding of both the letter and spirit of *ex parte* limitations. AOs should receive ongoing training throughout their careers and not just at the onset of their employment.<sup>51</sup> Such training can represent a crucial step in helping to improve the consistency and quality of AO performance.

Appeals must also find ways of limiting attrition, which it has done by creating career ladders for lower-graded employees.<sup>52</sup> It has also attempted to create higher-graded career ladders, but the IRS Human Capital Office (HCO) halted these efforts due to requirements of the Office of Personnel Management.<sup>53</sup> Beyond these efforts, Appeals also must be able to ramp up hiring so that it can restore AO numbers to near-2010 levels with qualified applicants. For this broad hiring to occur, the IRS must allocate Appeals the necessary funding, and IRS HCO must function more effectively and efficiently than it has in recent years.<sup>54</sup> If Appeals is able to achieve critical mass, this will help stabilize institutional knowledge and ensure sufficient staffing to address daunting case receipts and spiraling cycle times.

## Appeals' Culture Prioritizes the IRS Over Taxpayers<sup>55</sup>

### *Appeals Must Operate Independently of IRS Influence*

Many of the delays discussed above are beyond Appeals' direct control. Nevertheless, the National Taxpayer Advocate appreciates that Appeals is working to address these issues and expedite the Appeals process. Just as important as a timely appeal, however, is an accessible forum in which taxpayers can obtain an even-handed outcome. Appeals must be independent, both in fact and in appearance. Its mission of achieving the maximum number of fair case resolutions requires that Appeals favor neither the IRS nor taxpayers. This unbiased outlook is essential to arrive at objective evaluations of IRS positions and to negotiate case settlements with taxpayers.

Congress has long understood the importance of an independent Appeals function within the IRS as a means of minimizing litigation, which is burdensome and expensive to both taxpayers and the government. Accordingly, Congress codified Appeals' operations as part of the IRS Restructuring and Reform Act of 1998 (RRA 98).<sup>56</sup> Later, the IRS took steps to preserve Appeals' independence by placing parameters around *ex parte* communications between IRS personnel and Appeals.<sup>57</sup> In 2019, Congress then weighed in by codifying the office and retitling it the "Internal Revenue Service **Independent** Office of Appeals"<sup>58</sup> (emphasis added). As explained in the legislative history of the Taxpayer First Act, the intent of the provision was to "reassure taxpayers of the independence" of Appeals.<sup>59</sup> The National Taxpayer Advocate does not believe that anyone assumes that changing the name to include "independent" actually makes the organization independent; rather, it is the actions that will support this conclusion and sway the taxpayer's perception of an unbiased Appeals function. "Independent" should not be in name only.

Congress's legislative efforts are based in the recognition that Appeals is in constant jeopardy of having its culture subsumed within the larger IRS culture. Appeals must guard against this gravitational pull if it is to fulfill its mission. For example, Appeals has some offices that are located in the same posts of duty as other IRS personnel in many cities and also receives advice from IRS Counsel.<sup>60</sup> While Appeals is generally not bound by this advice,<sup>61</sup> these repeated interactions almost inevitably create a combined institutional comfort, familiarity, and credibility that can unintentionally put taxpayers at a disadvantage and negatively impact the appearance of objectivity. As a result, Appeals should at least consider the desirability and feasibility of seeking segregated office space and having its own independent Counsel, similar to that currently sought by TAS.<sup>62</sup> The lack of apparent independence will negatively impact its mission.

A more immediately achievable step that would further the perception of evenhandedness is to require AOs share the ACM with taxpayers at the close of the case.<sup>63</sup> AOs draft the ACM at the end of an appeals proceeding to explain the analysis and support the outcome. The ACM, which can be quite detailed, is shared within the IRS but not with affected taxpayers. Arguably, circulation of the ACM does not represent *ex parte* communication, as the matter has been administratively concluded within the IRS. Nevertheless, the failure to share the ACM with taxpayers does impact taxpayers' perception of Appeals' objectivity. These cases are resolved based upon a taxpayers' request for administrative appeal, and it seems reasonable that taxpayers should be allowed to see the documentation setting forth the reasoning that governed their outcomes. In some instances, the issue impacts a tax position on a future tax return, and taxpayers should have an understanding of how the Appeals resolution impacts subsequent return positions. Failure to do so makes Appeals look very much like an IRS operating division, functioning to support the larger IRS institution. Such a relationship and all such appearances greatly impede the fact and appearance of independence.

Once Appeals has closed a case, AOs in certain situations have the option of holding a post-settlement conference with the originating function.<sup>64</sup> The purpose of this conference is to help Compliance understand the rationale for the Appeals decision and to allow Compliance to use delegated authority to settle cases with the same or related taxpayers in a manner consistent with the Appeals decision. However, this post-settlement conference is not open to the taxpayer, and the taxpayer is kept in the dark regarding discussions that may impact the future actions of Compliance. Further, if the Compliance team provides negative feedback to the AO, the possibility exists that the AO may be inclined to settle similar cases differently in the future to avoid conflict with other IRS personnel.<sup>65</sup> By routinely sharing the ACM with both Compliance and the taxpayer and by allowing taxpayers to attend the post-settlement conference, even if only in a monitoring capacity, Appeals can ensure transparency in the decision-making process and defuse potential conflict from Compliance.

### ***Taxpayers Should Be Able to Meet in Person With Their Decisionmaker***

Taxpayers and their representatives have historically recognized the importance of the right to sit down across a table and discuss their case with an AO who can independently bring about its ultimate resolution. For example, the American Bar Association Section of Taxation has explained, "In order for taxpayers to be amenable to the administrative Appeals process, they must feel that their legal arguments and perspective on an issue have been heard – and for that, there is no substitute for a face-to-face conference."<sup>66</sup> Likewise, a member of the American Institute of Certified Public Accountants (AICPA) commented, "For many taxpayers... Appeals is the first opportunity they have to present their case and have a discussion about their particular situation. By limiting face-to-face conferences, taxpayers lose the sense that their tax positions and perspectives are considered impartially."<sup>67</sup>

To its credit, Appeals now makes an effort to facilitate such meetings, and taxpayers are generally entitled to an in-person conference.<sup>68</sup> In practice, however, that right is subject to some meaningful limitations, such as the ability of the assigned office to accommodate an in-person conference or the availability of a local AO with

subject matter expertise. Absent a conjunction of these circumstances, taxpayers can only obtain an in-person conference if they request a case transfer and are willing to travel to an available location.<sup>69</sup>

The need to seek a case transfer to accommodate an in-person conference often carries a steep price in terms of delay. One practitioner explained that if taxpayers have been waiting a year for Appeals consideration, they don't want to hear that it will take months to reassign the case for an in-person conference.<sup>70</sup>

Even when in-person conferences are actually held, practitioners have expressed frustration regarding the increasing prevalence of decisions being taken out of the hands of the assigned AO. They lament that settlements, rather than being determined by AOs with specific case knowledge, are increasingly governed by Appeals subject matter experts and technical guidance coordinators who are based in different field offices and who are not necessarily made available to taxpayers.<sup>71</sup> Among other things, settlement authority is limited when issues are designated for litigation by Counsel or established as coordinated issues, which theoretically maintains the independence of AOs but creates an environment in which that independence is highly likely to be underutilized.<sup>72</sup>

Practitioners have expressed to TAS the perception that these subject matter experts take a meaningfully different approach, compared to the AOs assigned to their cases. One practitioner commented that these people are sometimes not trained as AOs, don't have the same priorities, and often don't understand hazards settlements. Sometimes they aren't even at the Appeals conference, especially in the case of coordinated issues, in which, according to the practitioner, all that is provided is a broad memo applicable to all taxpayers.<sup>73</sup> Another practitioner raised the core issue of who is the real decisionmaker – Appeals or subject matter experts?<sup>74</sup> AOs themselves have apparently complained of their hands being tied, with one veteran AO reportedly telling a taxpayer off the record that he couldn't settle the case and that if he offered the taxpayer anything beyond what was approved by Counsel, he would get fired.<sup>75</sup>

The inability to engage directly with an independent decisionmaker in hopes of obtaining a case-specific settlement generates the same type of frustration as practical limitations in receiving an in-person conference. The desire of taxpayers and practitioners is straightforward, although admittedly difficult for Appeals to accommodate. The reoccurring theme arising in TAS's interaction with taxpayers and tax practitioners is their wish to sit across the table from a knowledgeable, unbiased party who possesses the authority to resolve the case based on the prevailing facts and circumstances.



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To be fair, in most appeals, the assigned AO has general discretion to resolve a case, and taxpayers are well-served by, and content with, appeals conferences held by phone or videoconference. Given this reality, it is even more important that Appeals' generally good work not be obscured by the quantitatively small number of cases in which taxpayers are unable to obtain a timely in-person appeal or where an AO lacks the authority to negotiate a specific settlement.<sup>76</sup> Even though limited in numbers, these cases fuel the public impression of lack of independence, which negatively impacts Appeals.



To increase the accessibility and timeliness of in-person conferences, as Appeals gains additional resources, it should make a priority of expanding its general staffing, its specialized expertise among AOs, and its geographic footprint. Appeals should also realize that actual or practical limitations on AOs' settlement authority cause significant consternation within the practitioner community and jeopardize the perception of Appeals as an independent office within the IRS. Accordingly, Appeals should work with the IRS to ensure that the discretion of AOs is abridged in only the most essential of situations and should make every effort to locate settlement authority with AOs rather than with subject matter experts or other national office personnel, even where such personnel are called upon to assist.<sup>77</sup> This discretion should include the right to determine that a taxpayer's specific facts and circumstances fall outside of coordinated issue guidelines.

***Appeals Should Respect the Wishes of Taxpayers When Inviting IRS Employees to Conferences***

Historically, Counsel and Compliance provided input into Appeals conferences via the case file and, if the case was particularly large or complex, at a pre-conference. The subsequent Appeals conference, sometimes referred to as the hearing, then was devoted to presentation of the taxpayer's case and settlement negotiations between the taxpayer (or the taxpayer's representative) and the AO. Counsel and Compliance personnel often did not attend such conferences, leaving taxpayers and AOs free to develop rapport, seek common ground, and pursue case resolution.

In 2016, Appeals revised provisions of the Internal Revenue Manual (IRM) to highlight AOs' discretion to include personnel from Counsel and Compliance in conferences, particularly in large and complex cases.<sup>78</sup> These personnel are not made a party to the actual settlement discussions, which occur near the conclusion of the conference, but they are typically given the opportunity to present an oral argument, and some even question taxpayers and their representatives during the hearing. Although Appeals has agreed to solicit and consider the views of taxpayers before inviting Counsel and Compliance to attend a conference, it has so far declined to make taxpayer consent a prerequisite for such attendance.<sup>79</sup>

Including Counsel and Compliance personnel over taxpayer objections violates the spirit of RRA 98 and dilutes the ability of taxpayers to present their cases in an independent forum.<sup>80</sup> It also runs counter to the purpose of an independent appeals conference, which is neither to give Compliance a second chance nor to transform Appeals into a mediation forum. Instead, the mission and credibility of Appeals rest on its ability to undertake direct and unbiased settlement negotiations with taxpayers and their representatives, apart from other IRS functions.

AOs should be expert enough and empowered enough to hold conferences without Counsel or Compliance involvement. The hesitancy or inability to deal with these challenging cases without bringing in outside experts points to training and staffing deficiencies in Appeals' current workforce. Likewise, it hints at a culture in which Appeals is reluctant to make unpopular decisions that potentially draw the ire of Counsel or Compliance. Appeals justifies Counsel and Compliance participation on efficiency grounds, but in cases where taxpayers object to this inclusion, Appeals should seek ways of understanding IRS positions and clarifying disputes with taxpayers that do not imperil its independence, either in perception or in fact.<sup>81</sup>

Appeals points to positive customer satisfaction surveys and argues that many taxpayers find the inclusion of Counsel and Compliance in hearings to be helpful in the resolution of their cases.<sup>82</sup> TAS has been told, however, that such proceedings do not always operate as intended, and their success rests with the personal strength of the AO in charge of the case. One practitioner observed that stronger AOs ask Compliance to leave the room when appropriate, but in some cases, more vocal or aggressive Counsel attorneys have remained in the room even into the settlement discussion, interrupting and pushing back on those negotiations, making the conference a bad experience.<sup>83</sup>

Even accepting, for the sake of argument, that the rosy picture painted by Appeals is correct and that most taxpayers appreciate the involvement of Counsel and Compliance in conferences, this is all the more reason why such participation should only occur if taxpayers consent. If the vast majority of taxpayers and their representatives do, in fact, welcome Counsel and Compliance participation and are persuaded that AOs are trained and empowered to prevent IRS personnel from interfering with settlement discussions, then Appeals has little to lose from allowing the small minority of taxpayers who feel differently to have the right to decline such inclusion. Giving taxpayers no choice in such a central aspect of their own conference is heavy-handed and runs counter to the taxpayer-centric model of tax administration that an Independent Office of Appeals should embrace.

## **CONCLUSION AND RECOMMENDATIONS**

A common refrain from taxpayers, practitioners, and stakeholders is that Appeals has a crucial role to play within the IRS and that AOs generally bring a high degree of skill and professionalism to their cases. However, over the past decade, Appeals has faced challenges with funding and employee attrition that have made providing top-notch taxpayer service difficult. Currently, the average Appeals case takes about a year to resolve, which means that by the time taxpayers hear from an AO to discuss their cases, they may already be frustrated and exhausted by the process. With increased hiring and training, as well as modernized systems for electronic case files, Appeals will be able to improve cycle times, an important step toward quality taxpayer service. Appeals can also make important strides in reinforcing its role as an independent office within the IRS by adopting more taxpayer-friendly practices regarding conferences and by empowering AOs as final decisionmakers.

### **Preliminary Administrative Recommendations to the IRS**

The National Taxpayer Advocate recommends that the IRS:

1. Continue efforts to increase hiring of APS personnel and AOs while designing career paths that encourage advancement and retention within Appeals.
2. Dedicate resources, including circuit riding to cities without an Appeals presence, to provide meaningful in-person conferences expeditiously and without the need for burdensome travel on the part of taxpayers and practitioners.
3. Empower AOs to make independent decisions on their assigned cases, with technical guidance coordinators and other subject matter experts limited to advisory roles in all but the rarest situations.
4. Change the IRM to require that all ACMs be shared with both the taxpayer and the Compliance function and, where post-settlement conferences are held, taxpayers must be invited to attend, even if in a monitoring capacity.

### **Legislative Recommendation to Congress**

The National Taxpayer Advocate recommends that Congress:

1. Amend IRC § 7803(e) to provide that, where taxpayers whose cases are nondocketed have a right to a conference with the Independent Office of Appeals, this conference will only include personnel from the Office of Chief Counsel or the Compliance functions of the IRS if taxpayers consent to that participation.<sup>84</sup>

## **RESPONSIBLE OFFICIAL**

Andrew Keyso, Chief, Independent Office of Appeals

## IRS COMMENTS

The IRS Independent Office of Appeals (Appeals) is proud of our unique role within tax administration of fairly and impartially resolving tax disputes without litigation, and we are committed at every level of the organization to enriching the taxpayer experience. We appreciate the National Taxpayer Advocate's input on how Appeals can improve its service to taxpayers and their representatives.

The Covid-19 pandemic imposed unprecedented demands on Appeals, and we are pleased with the creativity and ingenuity our employees showed in adapting work processes to ensure that Appeals continued to fulfill its responsibility to hear taxpayer appeals. Appeals employees transitioned cases to paperless formats, created electronic case closing processes to facilitate remote work, and conducted Appeals hearings through videoconference to provide taxpayers with a "face to face" option. Appeals reprioritized its work to address a spike in cases docketed in the U.S. Tax Court that resulted from difficulties taxpayers faced communicating with the IRS during the pandemic, and our employees worked and closed over 7,500 of these docketed cases using streamlined procedures that focused on quick resolutions for taxpayers. The efforts of our employees are reflected in the fact that many of these process changes will continue as best practices post-pandemic, and that cycle times, after peaking in 2021, began decreasing in 2022 and will continue to do so in 2023.

Appeals takes very seriously our mandate under the Taxpayer First Act to be independent from the IRS compliance functions and impartial in our consideration of taxpayer cases. Promoting an independent and impartial mindset requires continued emphasis, which Appeals provides through regular employee training and through the tone set by Appeals management. We are actively recruiting applicants from industry and public accounting, on the theory that an Appeals which is independent of IRS Compliance should have a workforce with a diversity of professional backgrounds. We will continue, within the bounds of our allocated budget, to strive to hire the best and brightest into Appeals, and to ensure these employees recognize their role as impartial arbiters who take the time to listen to, and hear, taxpayer concerns with an eye toward resolving cases consistent with the hazards of litigation faced by each side. In certain specialized cases, the Appeals Officer may coordinate with other Appeals employees, such as technical guidance coordinators, engineers, appraisers, and economists, for assistance – akin to how a law or accounting firm may employ in-house experts on specialty topics. It is essential to taxpayer fairness for Appeals to have a way to coordinate issues and ensure consistency in settlements nationwide.

Conferences are the key way in which Appeals hears the taxpayer's position, understands the legal and factual considerations informing the taxpayer's dispute with the IRS, and is able to propose a resolution to the taxpayer. During the conference, the taxpayer and their representative engage with Appeals in discussing potential settlements. At the conclusion of their case, the taxpayer and representative should clearly understand exactly how and why their case was resolved. Compliance is generally not present for the settlement discussions. Appeals shares the Appeals Case Memorandum memorializing the case resolution with Compliance so that Compliance can also understand the reasons for the settlement reached between the taxpayer and Appeals. Similarly, informational post-settlement conferences help Compliance understand the rationale for the Appeals decision. Post-settlement conferences are available only in cases originating from the IRS's Large Business & International (LB&I) Division and worked by an Appeals Team Case Leader (ATCL), some of the largest and most complex cases received in Appeals. These conferences are not a forum for Compliance to express disagreement with or critique the Appeals resolution.

Appeals' policies and procedures are informed by regular feedback from external stakeholders. We participate every year in the Nationwide Tax Forums, this year engaging with an audience of almost 8,000 tax practitioners about our ongoing efforts to improve the taxpayer experience. We also launched a *Practitioners Perspectives* series of panel discussions (available for playback on [IRS.gov](https://www.irs.gov)), in which practitioners share insights and input with Appeals technical employees on key workstreams and issues. In addition, every taxpayer or representative with a pending appeal is invited to participate in our customer satisfaction survey. Our survey results consistently show that the majority of Appeals customers are satisfied with the service they receive from Appeals, including the fairness of Appeals employees.

We recognize there is always room for improvement. Based on the feedback from external stakeholders, we recently updated our initial contact letters to provide the contact information of the assigned Appeals Officer's manager so that taxpayers and their representatives have a second point of contact should additional help be needed. We are also updating our policies and communications to ensure taxpayers and representatives understand that Appeals offers conferences by telephone, video, and in person, and that it is generally their choice how to meet with us. We will continue to listen to taxpayer and practitioner feedback and prioritize improvements to the taxpayer experience in Appeals during 2023.

## TAXPAYER ADVOCATE SERVICE COMMENTS

TAS applauds Appeals' efforts to address challenges, many of which are not of its own making. The COVID-19 pandemic presented Appeals' personnel and operations with substantial obstacles that it has successfully navigated. Appeals has also energetically addressed the flood of docketed appeals arriving in its inventory and is actively engaged in hiring additional AOs. This hiring will help alleviate case delays, but the attrition of veteran AOs sometimes leaves taxpayers with inconsistent experiences when bringing cases to Appeals. Training that focuses on the proper role of an AO, the importance of independence, the nuances of hazards of litigation settlements, and an understanding of both the letter and spirit of *ex parte* limitations, along with designing career paths that encourage advancement and retention within Appeals, will go a long way toward continuing to improve the consistency and quality of Appeals proceedings.

TAS agrees with Appeals regarding the importance of independent and unbiased case resolutions. Appeals deserves credit for its willingness to engage with the tax community and for the circumstance that the majority of taxpayers coming before Appeals are satisfied with their interactions and case outcomes. Nevertheless, additional steps need to be taken to preserve Appeals' independence and to foster a culture of taxpayer service. For example, although there is a role for technical experts and case coordination in certain situations, the pervasive use of these resources creates the perception, if not the reality, that Appeals is part of a larger IRS institution that simply dictates settlement terms to taxpayers. As a result, Appeals should empower AOs to make independent decisions on their assigned cases with technical guidance coordinators and other subject matter experts limited to advisory roles in all but the rarest situations.

Similarly, Counsel and Compliance actively participate in only a small portion of Appeals conferences and in many of those cases are welcomed, or at least accepted, by taxpayers and their representatives. This circumstance should make it easy for Appeals to respect the wishes of taxpayers who object to such participation. AOs routinely resolve legal issues and factual disputes without having Counsel and Compliance actively engaged in conferences, and AOs should be able to cope, even in the most complicated proceedings, where, for whatever reason, taxpayers prefer to seek case resolution without other IRS personnel.

Once Appeals proceedings are closed, taxpayers should receive a copy of the ACM and an invitation to attend the post settlement conference, if it is held. The National Taxpayer Advocate does not believe Appeals' role is to assuage or educate Compliance. While Compliance may well have a legitimate interest in understanding the rationale for an Appeals settlement and the impact this may have on future years, taxpayers are likewise entitled to this reasoning. Appeals explains that the communications occurring via these mechanisms are purely informational, but this only reinforces the need for transparency regarding the outcomes of taxpayers' own cases.

Appeals would benefit from continued progress toward a culture of improved taxpayer service and reinforcement of taxpayer rights. This would enhance the perception that Appeals provides an independent review in a fair and equitable forum while costing Appeals relatively little in terms of resources and efficiency. Appeals is essential to achieving administrative case resolutions within the IRS, and these steps will help ensure that taxpayers continue to value Appeals as a way to resolve their cases impartially, independent of the perspectives of Counsel and Compliance.

## **RECOMMENDATIONS**

### **Administrative Recommendations to the IRS**

The National Taxpayer Advocate recommends that the IRS:

1. Continue efforts to increase hiring of APS personnel and AOs while designing career paths that encourage advancement and retention within Appeals.
2. Dedicate resources, including circuit riding to cities without an Appeals presence, to provide meaningful in-person conferences expeditiously and without the need for burdensome travel on the part of taxpayers and practitioners.
3. Empower AOs to make independent decisions on their assigned cases, with technical guidance coordinators and other subject matter experts limited to advisory roles in all but the rarest situations.
4. Change the IRM to require that all ACMs be shared with both the taxpayer and the Compliance function and, where post-settlement conferences are held, taxpayers must be invited to attend, even if in a monitoring capacity.

### **Legislative Recommendation to Congress**

The National Taxpayer Advocate recommends that Congress:

1. Amend IRC § 7803(e) to provide that, where taxpayers whose cases are nondocketed have a right to a conference with the Independent Office of Appeals, this conference will only include personnel from the Office of Chief Counsel or the Compliance functions of the IRS if taxpayers consent to that participation.<sup>85</sup>



## Endnotes

- 1 Cycle time is defined as the time between when Appeals receives a case and when Appeals closes a case. IRS response to TAS information request (Aug. 24, 2022).
- 2 For simplicity, there are three main types of Appeals cases: (1) administrative appeals (non-docketed cases), (2) cases docketed in the U.S. Tax Court (docketed cases), and (3) collection and bankruptcy matters.
- 3 IRS response to TAS information request (Aug. 24, 2022). Appeals Technical Employee (ATE) is the umbrella term used to refer to any Appeals employee who is assigned a case for settlement consideration. This includes both Settlement Officers and Appeals Officers. For purposes of this Most Serious Problem, TAS will adopt the commonly used term "Appeals Officer" as a collective reference for ATEs. Internal Revenue Manual (IRM) Exhibit 8.1.1-1, Common Terms Used in Appeals (Oct. 1, 2016).
- 4 Government Accountability Office (GAO), GAO-18-6549, *Tax Administration: Opportunities Exist to Improve Monitoring and Transparency of Appeal Resolution Timeliness* (2018), [www.gao.gov/assets/700/694840.pdf](https://www.gao.gov/assets/700/694840.pdf); IRS response to TAS information request (Aug. 24, 2022).
- 5 IRS response to TAS information request (Aug. 24, 2022); IRS response to TAS fact check (Nov. 25, 2022).
- 6 See, e.g., TAS conversation with practitioner group (July 13, 2022).
- 7 For more background regarding the steps in an Appeals proceeding, including the pre-conference, see National Taxpayer Advocate 2017 Annual Report to Congress 204-205 (Most Serious Problem: *Appeals: The IRS's Decision to Expand the Participation of Counsel and Compliance Personnel in Appeals Conferences Alters the Nature of Those Conferences and Will Likely Reduce the Number of Agreed Case Resolutions*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC17\\_Volume1\\_MSP\\_18\\_AppealsCounsel.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC17_Volume1_MSP_18_AppealsCounsel.pdf).
- 8 The Examination and Collection functions of the IRS comprise IRS Compliance. For an in-depth discussion of the process that led to the IRS's current practice regarding Counsel and Compliance participation in conferences, see National Taxpayer Advocate 2017 Annual Report to Congress 203-210 (Most Serious Problem: *Appeals: The IRS's Decision to Expand the Participation of Counsel and Compliance Personnel in Appeals Conferences Alters the Nature of Those Conferences and Will Likely Reduce the Number of Agreed Case Resolutions*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC17\\_Volume1\\_MSP\\_18\\_AppealsCounsel.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC17_Volume1_MSP_18_AppealsCounsel.pdf). For TAS's current recommendation to Congress on this topic, see National Taxpayer Advocate 2022 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 78-80 (Legislative Recommendation: *Require Taxpayers' Consent Before Allowing IRS Counsel or Compliance Personnel to Participate in Appeals Conferences*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21\\_PurpleBook\\_05\\_StrengthTPRappeals\\_39.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_PurpleBook_05_StrengthTPRappeals_39.pdf). See also Appeals, Appeals Team Case Leader Conferencing Initiative: Summary of Findings and Next Steps (Sept. 2021), [www.irs.gov/pub/irs-utl/atcl\\_update.pdf](https://www.irs.gov/pub/irs-utl/atcl_update.pdf).
- 9 IRS response to TAS information request (Aug. 24, 2022); IRS response to TAS fact check (Nov. 25, 2022).
- 10 Appeals notes that the 35-day shutdown in FY 2019 and the COVID-19 pandemic for FYs 2020-2022 significantly impacted cycle time, as Appeals employees were mandatorily kept out of the office, creating delays in moving case files and other case-related materials. IRS response to TAS fact check (Nov. 26, 2022).
- 11 IRS response to TAS information request (Aug. 24, 2022). This figure excludes one workstream, coordinated industry cases, for the sake of clarity because while the cycle times of these cases follow the same trend, the 61 cases from this workstream closed in FY 2021 took an average of 1,589 days to resolve, and since this is so much higher than all other workstreams, the inclusion of coordinated industry cases in this figure would render the trends difficult to portray.
- 12 TAS conversation with practitioner group (June 21, 2022).
- 13 *Id.*
- 14 *Id.*
- 15 IRC § 6532(a)(1), (2). If the taxpayer does not file a timely refund suit, any refund issued after the period for filing suit is an erroneous refund. IRC § 6514(a)(2). Any extension must be executed by the taxpayer and the IRS before the two-year period has expired. Rev. Rul. 71-57, 1971-1 C.B. 405.
- 16 See Erin M. Collins, Notice of Claim Disallowance: Don't Make This Mistake, NATIONAL TAXPAYER ADVOCATE BLOG (Apr. 15, 2022), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-notice-of-claim-disallowance-dont-make-this-mistake/>.
- 17 *Id.*
- 18 National Taxpayer Advocate Priority Guidance Plan Recommendation #2 (June 3, 2022) (on file with TAS). See IRS, Office of Tax Policy and Internal Revenue Service Priority Guidance Plan, <https://www.irs.gov/privacy-disclosure/priority-guidance-plan> (last visited Oct. 27, 2022).
- 19 IRS response to TAS fact check (Nov. 25, 2022).
- 20 IRM 8.20.5.5.1.1(4), (6), Docketed List Responsibilities (July 1, 2017). According to Appeals, this should be changing, as Counsel no longer wants the administrative list shipped to them in most cases. See IRS response to TAS fact check (Nov. 25, 2022).
- 21 IRS response to TAS fact check (Nov. 25, 2022).
- 22 *Id.*
- 23 *Id.*
- 24 *Id.*
- 25 IRS response to TAS information request (Aug. 24, 2022).
- 26 *Id.*
- 27 *Id.*
- 28 Naomi Jagoda, *IRS or Waffle House? Hot Market Fuels Struggle to Fill Key Roles*, BLOOMBERG DAILY TAX REP. (Apr. 19, 2022), <https://news.bloomberglaw.com/daily-tax-report/irs-or-waffle-house-hot-market-fuels-struggle-to-fill-key-roles>.
- 29 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14 (commonly referred to as the "Inflation Reduction Act of 2022"), Pub. L. No. 117-169, § 10301, 136 Stat. 1818, 1831-32 (2022).
- 30 IRS response to TAS information request (Aug. 24, 2022).

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- 31 IRS response to TAS information request (Aug. 24, 2022).
- 32 GAO, GAO-18-6549, *Tax Administration: Opportunities Exist to Improve Monitoring and Transparency of Appeal Resolution Timeliness* (2018), [www.gao.gov/assets/700/694840.pdf](http://www.gao.gov/assets/700/694840.pdf).
- 33 IRS response to TAS information request (Aug. 24, 2022).
- 34 In FY 2021, cases receipts were 72,216, while in FY 2022 they increased to 74,000. IRS response to TAS information request (Aug. 24, 2022); IRS response to TAS fact check (Nov. 25, 2022).
- 35 IRS response to TAS information request (Aug. 24, 2022).
- 36 TAS conference call with practitioner group (July 13, 2022).
- 37 *Id.*
- 38 IRS response to TAS information request (Aug. 24, 2022).
- 39 *Id.*
- 40 Letter from the American Bar Association (ABA) Section of Tax'n to the Comm'r of Internal Revenue (Apr. 5, 2022).
- 41 National Taxpayer Advocate 2021 Annual Report to Congress 153-154 (Most Serious Problem: *Correspondence Audits: Low-Income Taxpayers Encounter Communication Barriers That Hinder Audit Resolution, Leading to Increased Burdens and Downstream Consequences to Taxpayers, the IRS, TAS, and the Tax Court*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21\\_MSP\\_09\\_Correspondence.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_09_Correspondence.pdf).
- 42 See IRM 4.19.13.17.3, Docketed Case Examination Assistance (Apr. 6, 2022), recently updated to mirror IRM 8.4.4.1, Docketed Case Examination Assistance Request Overview (Jan. 17, 2017).
- 43 National Taxpayer Advocate 2015 Annual Report to Congress 82-90 (Most Serious Problem: *Appeals: The Appeals Judicial Approach and Culture Project Is Reducing the Quality and Extent of Substantive Administrative Appeals Available to Taxpayers*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC15\\_Volume1\\_MSP\\_08\\_Appeals.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC15_Volume1_MSP_08_Appeals.pdf).
- 44 IRS, Internal Guidance Memorandum AP-08-0714-0005, Implementation of the Appeals Judicial Approach and Culture (AJAC) Project, Collection – Phase 2 (July 10, 2014).
- 45 *Id.*
- 46 Memorandum to all Independent Office of Appeals Employees from Andrew Keyso, Chief, Office of Appeals (Apr. 19, 2022). Note that the flip side of prioritizing docketed casework inevitably is additional delay for nondocketed cases.
- 47 IRS, Pub. 6511, Independent Office of Appeals Focus Guide (Nov. 2022).
- 48 IRS response to TAS information request (Aug. 24, 2022).
- 49 TAS conference call with practitioner group (July 13, 2022).
- 50 *Id.*
- 51 Appeals points out that it engages in this kind of training at hiring. Appeals also provides some ongoing training in various substantive areas, frequently in the form of workshops. IRS response to TAS fact check (Nov. 25, 2022).
- 52 IRS response to TAS information request (Aug. 24, 2022).
- 53 *Id.*
- 54 National Taxpayer Advocate 2021 Annual Report to Congress 51-65 (Most Serious Problem: *IRS Recruitment, Hiring, and Training: The Lack of Sufficient and Highly Trained Employees Impedes Effective Tax Administration*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21\\_MSP\\_02\\_Recruitment.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_02_Recruitment.pdf).
- 55 Appeals suspended in-person conferences on account of the pandemic in March 2020 and recommenced such conferences in May 2022. IRS response to TAS information request (Aug. 24, 2022). The issues discussed in this section have long challenged taxpayers and their representatives, and there is no reason to believe that anything has improved during the pandemic. IRS, IR-2020-59, Appeals Conferences Stopped: IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020).
- 56 RRA 98, Pub. L. No. 105-206, § 1001(a)(4), 112 Stat. 685, 689 (1998); 144 Cong. Rec. S7622 (July 8, 1998) (statement of Sen. Roth).
- 57 See Rev. Proc. 2012-18, 2012-10 I.R.B. 455, *amplifying, modifying, and superseding* Rev. Proc. 2000-43, 2000-43 I.R.B. 404; see also Notice 2011-62, 2011-32 I.R.B. 126.
- 58 Taxpayer First Act, Pub. L. No. 116-25, § 1001, 133 Stat. 981, 983 (2019) (codified at IRC § 7803(e)); H.R. No. 116-39, pt. 1, at 29 (2019) (accompanying H.R. 1957, which was enacted into law without change to this provision as H.R. 3151).
- 59 H.R. No. 116-39, pt. 1, at 29 (2019) (accompanying H.R. 1957, which was enacted into law without change to this provision as H.R. 3151).
- 60 IRC § 7803(e)(6)(B). See also H.R. No. 116-39, pt. 1, at 30 (2019) (accompanying H.R. 1957, which was enacted into law without change to this provision as H.R. 3151).
- 61 IRM 8.1.10.4.4(3), Communications with Counsel (Oct. 1, 2012).
- 62 National Taxpayer Advocate 2022 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 81-83 (Legislative Recommendation: *Clarify That the National Taxpayer Advocate May Hire Legal Counsel to Enable Her to Advocate More Effectively for Taxpayers*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21\\_PurpleBook\\_07\\_StrengthTAS\\_40.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_PurpleBook_07_StrengthTAS_40.pdf).
- 63 IRM 8.6.2.2, Introduction to Appeals Case Memos (ACMs) (Aug. 17, 2017). The ACM is a report the AO prepares to adequately explain and support the basis on which a work unit is disposed. Every Appeals work unit requires an ACM. IRM 8.6.2.3.5, 5402 and ACM Case Closing Procedures (July 26, 2022); IRM 8.6.2.3.4, Routing Form 5402 and ACM Feedback to LB&I for Non-ATCL Cases (Mar. 16, 2015).
- 64 IRM 8.1.10.4.1.4, Post-Settlement Conferences (June 21, 2012). These post-settlement conferences are only available in cases originating from the LB&I Division that are worked by an Appeals Team Case Leader. See IRS response to TAS fact check (Nov. 25, 2022); IRM 8.7.11.13.1(1), Post Settlement Conference Scope (Sept. 4, 2018).
- 65 These conferences are not intended to provide an opportunity for Compliance to critique Appeals' determinations or to replace existing formal dissent procedures available to LB&I. IRS response to TAS fact check (Nov. 25, 2022). See IRM 8.7.11.13(3), Post Settlement Conference (Sept. 4, 2018).

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- 66 ABA Members Comment on Recent Appeals Division Practice Changes, TAX NOTES TODAY, 2017 TNT 89-10 (May 10, 2017); National Taxpayer Advocate 2017 Annual Report to Congress 195-202 (Most Serious Problem: *Appeals: The IRS Office of Appeals Imposes Unreasonable Restrictions on In-Person Conferences for Campus Cases, Even As It Is Making Such Conferences More Available for Field Cases*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC17\\_Volume1\\_MSP\\_17\\_AppealsRestrictions.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC17_Volume1_MSP_17_AppealsRestrictions.pdf).
- 67 IRS Reform: *Resolving Taxpayer Disputes: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 115th Cong. (2017) (statement of Chastity K. Wilson, AICPA); National Taxpayer Advocate 2017 Annual Report to Congress 195-202 (Most Serious Problem: *Appeals: The IRS Office of Appeals Imposes Unreasonable Restrictions on In-Person Conferences for Campus Cases, Even As It Is Making Such Conferences More Available for Field Cases*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC17\\_Volume1\\_MSP\\_17\\_AppealsRestrictions.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC17_Volume1_MSP_17_AppealsRestrictions.pdf).
- 68 IRM 8.6.1.5.1, Conference Practice (Sept. 25, 2019). For an in-depth discussion of Appeals' conference practices, see National Taxpayer Advocate 2017 Annual Report to Congress 195-202 (Most Serious Problem: *Appeals: The IRS Office of Appeals Imposes Unreasonable Restrictions on In-Person Conferences for Campus Cases, Even As It Is Making Such Conferences More Available for Field Cases*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC17\\_Volume1\\_MSP\\_17\\_AppealsRestrictions.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC17_Volume1_MSP_17_AppealsRestrictions.pdf).
- 69 IRM 8.6.1.5.1, Conference Practice (Sept. 25, 2019). This IRM encourages AOs to use conference locations that are reasonably convenient for taxpayers, their representatives, and Appeals. Difficult choices arise for taxpayers, however, when no such convenient locations are available in the near-term.
- 70 TAS conversation with practitioner group (July 13, 2022).
- 71 IRS response to TAS fact check (Nov. 25, 2022).
- 72 Proposed Reg. § 301.7803-2(c)(21); IRM 4.10.28, Examination of Returns, Designation of Cases for Litigation (Apr. 4, 2022); IRM 8.7.3, Appeals, Technical and Procedural Guidelines, Domestic and International Operations Programs (Dec. 1, 2022). Appeals states that Appeals Coordinated Issues are needed to help to ensure consistency in settlements throughout the country. See IRM 8.7.3.3, Coordinated Issues (Oct. 1, 2012); IRS response to TAS fact check (Nov. 25, 2022).
- 73 TAS conversation with practitioner group (June 7, 2022). Appeals states, "Our international issue coordinators are all trained as AOs and many, but not all (i.e., some of our recent external hires straight out of private consulting and law firms, etc.) of our TGCs have been trained as AOs. All of the specialists attend Appeals Basic Training if they had not previously attended before joining our area focused on internal work (Area 11) or Technical Guidance." IRS response to TAS fact check (Nov. 25, 2022).
- 74 TAS conversation with practitioner group (July 13, 2022).
- 75 TAS conversation with practitioner group (July 14, 2022).
- 76 As previously discussed, this lack of authority can be either explicit or implicit. See Proposed Reg. § 301.7803-2(c)(1)-(24).
- 77 Appeals states that settlement authority always rests with Appeals Team Case Leaders or Appeals Team Managers and that subject matter experts or other technical experts do not have settlement authority. However, TAS is concerned that increased reliance on subject matter experts and increased issue coordination abridges settlement authority in practice, even if a boundary exists on paper. IRS response to TAS fact check (Nov. 25, 2022).
- 78 IRM 8.6.1.5.4, Participation in Conferences by IRS Employees (Oct. 1, 2016). For a more in-depth discussion of this topic, see National Taxpayer Advocate 2019 Annual Report to Congress 62-68 (Most Serious Problem: *Appeals: The Inclusion of Chief Counsel and Compliance Personnel in Taxpayer Conferences Undermines the Independence of the Office of Appeals*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC19\\_Volume1\\_MSP\\_07\\_APPEALS.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC19_Volume1_MSP_07_APPEALS.pdf); National Taxpayer Advocate 2022 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 78-80 (Legislative Recommendation: *Require Taxpayers' Consent Before Allowing IRS Counsel or Compliance Personnel to Participate in Appeals Conferences*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21\\_PurpleBook\\_05\\_StrengthTPRappeals\\_39.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_PurpleBook_05_StrengthTPRappeals_39.pdf).
- 79 Appeals, Appeals Team Case Leader Conferencing Initiative: Summary of Findings and Next Steps (Sept. 2021), [www.irs.gov/pub/irs-utl/atcl\\_update.pdf](http://www.irs.gov/pub/irs-utl/atcl_update.pdf).
- 80 "This legislation requires the agency to establish an independent Office of Appeals – one that may not be influenced by tax collection employees or auditors." 144 Cong. Rec. S7622 (July 8, 1998) (statement of Sen. Roth). Appeals states that the ATCL Conferencing Initiative applies to the most complex cases, which represent less than one percent of Appeals' caseload. IRS response to TAS fact check (Nov. 25, 2022). TAS's primary concern in this context, however, is not with the number of cases in which Counsel and Compliance participate, but with the circumstance that this participation can occur without the consent of taxpayers.
- 81 IRS response to TAS fact check (Nov. 25, 2022).
- 82 Appeals, Appeals Team Case Leader Conferencing Initiative: Summary of Findings and Next Steps (Sept. 2021).
- 83 TAS conversation with practitioner group (July 13, 2022).
- 84 National Taxpayer Advocate 2022 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 78-80 (Legislative Recommendation: *Require Taxpayers' Consent Before Allowing IRS Counsel or Compliance Personnel to Participate in Appeals Conferences*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21\\_PurpleBook\\_05\\_StrengthTPRappeals\\_39.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_PurpleBook_05_StrengthTPRappeals_39.pdf).
- 85 *Id.*